

Appl. No. 10/696,671  
Reply to Office Action of October 30, 2007

### REMARKS/ARGUMENTS

Applicant would like to thank the Examiner and the Examiner's supervisor for taking the time to discuss the subject case the afternoon of December 11, 2007. Based upon the discussion applicant believes the claims as amended are acceptable for allowance. Amendments to the claims have been made to facilitate prosecution and should not be viewed as acquiescence to any of the rejections in the case.

Claims 1-19, 21-30, 32, 35-36, 38-40, 42-45, 47-49, and 55-58 are canceled, claims 20, 31, 33, 34, 37, 41, 46, 52-54 and 59 are amended herein, claims 62-64 have been previously presented and new claims 65-98 have been added. Amendments to the claims are fully supported by the specification. For example, it is clear based upon the specification that the invention provides for a chicken whose genome contains a transgene introduced by a replication-deficient retroviral vector, which is now stated in independent claims 20, 31, 34, 41 and 59. The features of the Markush groups of now canceled claims 29 and 60 have been placed into new dependent claims 65 to 98 and the detectable level feature of now canceled claims 55 and 56 has been included in independent claims 20, 31, 34, 41 and 59. Other minor amendments to the claims have been made in order to add clarity. The title has been amended to more accurately reflect the claimed subject matter. This amendment includes no new matter.

The Examiner has made obviousness type double patenting rejections over the claims of copending patent application Nos. 11/377,302; 11/274,674; 11/100,255; 11/099,934; 11/337,361; and 11/376,023. The Examiner indicates that these rejections are provisional rejections since the conflicting claims have not yet been patented.

MPEP §822.01 states that "If the 'provisional' double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications and permit the application to issue as a patent....". None of the cited co-pending applications have been allowed. Therefore, applicant respectfully requests that the Examiner withdraw the provisional double patenting rejection and allow the pending claims in the present application to issue.

Should any one of the cited co-pending applications issue before the allowance of the present application, applicant is willing to consider the possibility of filing an appropriate terminal disclaimer.

Appl. No. 10/696,671  
Reply to Office Action of October 30, 2007

If any issues remain to be addressed in this matter, which might be resolved by discussion, the Examiner is respectfully requested to call applicant's undersigned counsel at the number indicated below.

Respectfully submitted,



Kyle Yesland, 706-277-1170, ext 233  
Attorney for Applicants  
Reg. No. 45,526  
AviGenics, Inc.  
Legal Department  
111 Riverbend Road  
Athens, GA 30605